

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA DISTRICT REGISTRY)**

**AT MWANZA**

**CIVIL REVISION NO. 02 OF 2022**

*(Arising from the decision of the District Court of Ilemela at Mwanza in Civil Appeal No. 16 of 2021 dated 31/01/2022 delivered by Hon. A.N. Sumari, SRM, Originating from Ilemela Primary Court in Civil Case No. 130 of 2021.)*

**TUBEAMOI SACCO S LTD..... APPLICANT**

**VERSUS**

**GEORGE COSMAS KARUNDO.....RESPONDENT**

**RULING**

*27<sup>th</sup> July & 16<sup>th</sup> September, 2022*

**ITEMBA, J.**

The applicant herein, did file this application for revision. The respondent, quickly tabled a notice of preliminary objection to the effect that;

- 1. 'The application for revision No.2 of 2022 before this honorable court is incompetent for being misconceived and bad in law for contravening the principle of law.'*

Formely, the respondent herein had instituted a civil suit no. 130 of 2021, against the appellant, at Ilemela Primary Court. The suit was heard and decided in favor of the respondent. Upon being aggrieved by the decision, the appellant lodged an appeal before Ilemela District Court in



which the trial court's decision was upheld. Still determined to pursue his right, the appellant is now before this court trying to revert the decision. He has come up with an application for revision through which a total of three grounds of complaints are levelled. However, for reasons to be apparent in due course, I shall not reproduce the said grounds.

The representation of the parties were through the learned counsels, Mr. Sijaona Revocatus for the respondent and Ms. Rose Edward Ndege for the applicant. It was agreed by both parties that hearing of preliminary objection will be by way of written submissions.

Moving the court, the learned counsel for the respondent submitted that, when the party in a suit has the right to appeal, it must exhaust that remedy first before opting to pursue other available remedies such as revision. He argues that, the applicant in this matter at hand had a right to appeal but for the reasons known best to himself, he chose to apply for revision, an act which contravenes the principle of law which has been laid down in numerous decisions. The counsel for the respondent went on contending that, applying for revision amounts to abuse of court process because after realizing that he was out of time to file his appeal he deliberately decided to file the said application without any reasonable cause. He added that, revision cannot be used as an alternative to appeal unless there are exceptional circumstances.

A handwritten signature in blue ink, appearing to read 'A. Thomas'.

To bolster his averments the learned counsel has cited several decisions in which the foundation was laid down to the effect that where there is a right of appeal, the power of revision of this court cannot be invoked save for exceptional circumstances, as follows; ***Felix Lendita vs Michael Longidu***, Civil Appeal No. 312 of 2017 CAT (Unreported), ***Augustino Lyatonga Mrema vs Republic and Masumbuko Lamwai*** [1999] T.L.R 27, ***South Esso vs The People Bank of Zanzibar*** [2001] T.L.R 43 and ***Dismas Chekamba vs Issa Tanditse***, Civil Application No. 2 of 2010 (Unreported).

He further contended that the applicant has failed to put forward the exceptional circumstances which would allow this court to invoke its revisionary powers provided under Section 79 (1) of the Civil Procedure Code. For these reasons, he urges this court to struck out the application with costs.

In her rebuttal submission, the learned counsel for the applicant submitted that the preliminary point of the objection itself falls short of the prescribed standards. She further submitted that given the holding in the case of **Mukisa Biscuits Manufacturing Co. Ltd**, a preliminary point of objection must be on a pure point of law that does not require facts. In addition, he argues that the preliminary point of objection as

raised by the respondent through his learned counsel, does not meet the threshold as set above because it requires evidence to prove.

Regarding the competence of the application before this court, she avers that the application has been preferred under Section 79 (1) of the CPC. According to her, the said provision is partly relevant because in order to file revision, there must be no pending appeal before the court. And, for that reason, she argues that the instant application is properly brought before this court as there is no pending appeal.

She contended further that, they opted to apply for revision because both lower courts assumed powers to entertain the matter while both had no jurisdiction and the law allows such applications where the applicant finds revision to be most preferable than appeal. She supported her averments by citing the decision in the case of ***Manager Majengo Saccoss v Medrad Prosper Nyakulima***, Civil Appeal No. 7 of 2020 HC Dodoma (Unreported), ***Mechmar Corporation (Malaysia) Berhad (In liquidation) vs VIP Engineering & Marketing Ltd & 3 Others***, Civil Application No. 190 of 2013, ***Transport Equipment Ltd vs D.P Valambia*** [1995] T.L.R 161 and ***Moses Mwakitebe vs The Editor Uhuru and Two Others*** [1995]. She added that following the failure of the applicant to file an appeal in time, she opted to apply for revision

instead because it would lead to unnecessary delay. In the end, she urged the court to struck out the preliminary objection with costs.

In his brief rejoinder, the learned counsel for the respondent submitted that, the raised preliminary objection, is on a pure point of law because it has been stated by the court of appeal in different decisions to the effect that revision can be preferred where there is no right of appeal.

On contentions that the application has met the requirement because there is no pending appeal before the court, he insisted that revision cannot be used as an alternative to appeal. That, as long as the applicant had a right to appeal he was not supposed to opt for revision. He states further that, all the complaints that the applicant has put forward in his application, would have been made as grounds of appeal and still the court could make its decision based on those grounds.

Having gathered the arguments both for and against the preliminary objection raised by the respondent, this court is invited to rule out whether or not the said point of objection has merit.

As rightly pointed out by the learned counsel for the respondent the law is quite clear that where there is a right of appeal, revision cannot be used as an alternative, unless there are exceptional circumstances. In the

decision of ***Halais Pro Chemie Industries Ltd vs A.G. Wella*** [1996]

T.L.R 296 the Court of Appeal stated that;

*'Except under exceptional circumstances, a party to proceedings in the High Court could not invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court.'*

The above quotation puts a restriction on the party with the right of appeal to opt for revision platform as an alternative to appeal. It must be proved that there is an exceptional circumstance for the party to be allowed to pursue its right through revision as a substitute of appeal.

Some of the conditions in which revision can be preferred as alternative to appeal were mentioned in the case of ***Transport Equipment Ltd v D.P Valambia*** that: (i) *where there is no right of appeal* (ii) *where the right is there but it has been blocked by judicial process and* (iii) *where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal.*

The question to be answered at this stage is whether the instant application has exceptional circumstances as set in the above quotation warranting this court to invoke its revisionary powers.

The learned counsel for the applicant has stated that they chose revision because they realized that the appeal was already out of time and



the lower courts entertained the matter without having jurisdiction. With due respect to the counsel, these are not sufficient grounds to move the court to invoke its revisionary powers. As rightly pointed by the counsel for respondent, the claims on the lack of jurisdiction of the lower courts could be relied as a ground of appeal. The issue that the appeal was already out of time does not justify the applicant to opt for revision. The proper avenue was for the applicant to apply for an enlargement of time to file an appeal even though it sounded like a long process but that is the law and compliance is inevitable. Court procedures must be observed, failure amounts to abuse or misuse of the court process. The applicant ought to have given sufficient reasons for not having appealed in time. I am aware of the concern put forward in paragraph 5 of the applicant's affidavit that the applicant has received a summons from Ilemela Primary Court for execution, still I am not persuaded as there are no clear reasons as to why he failed to file an appeal within time. Having said that, the authorities which have been cited by the counsel for the applicant are distinguishable as I have already said that the applicant had a right to appeal and there are no sufficient reasons given as to why the applicant has failed to exercise the said right.



The counsel for the applicant has also faulted the preliminary objection that it does not meet the standards set out in **Mukisa Biscuits Manufacturing Co. Ltd**, she avers that the same requires proof. However, I disagree with these averments because the objection is based on the settled principle of law as laid down by the Court of Appeal in different decisions as mentioned hereinabove.

To sum up, the preliminary objection is sustained. I concur with the view that the application is incompetent. It is accordingly struck out with costs. It is so ordered.

DATED at **MWANZA** this 16<sup>th</sup> day of September 2022.

**L. J. ITEMBA**

**JUDGE**

Ruling delivered under my hand and seal of the court in chambers, in presence of Mr. Gratian P. Berusa chairman of the applicant, the respondent in person and Ignas, RMA.



**L. J. ITEMBA**

**JUDGE**

**16/9/2022**